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IN THE

SUPREME COURT

OF THE

United States

October Term, 1953

RAYMOND M. BRADDOCK, *Petitioner,* vs. THE PEOPLE OF THE STATE OF CALIFORNIA, *Respondent.*	No. .....

PETITION FOR WRIT OF CERTIORARI and MOTION FOR LEAVE TO PROCEED UPON THE TYPEWRITTEN RECORD.

To The Honorable Earl G. Warren, Chief Justice and to the Honorable Associate Justices of the Supreme Court of the United States:

YOUR PETITIONER, Dr. Raymond M. Braddock, a physician and surgeon, respectfully petitions for a Writ of Certiorari directed to the Supreme Court of the State of California and in respect thereto sets forth as follows:

OPINIONS BELOW

People v. Braddock, in the Supreme Court of the State of California, 264 Pacific 2d 521; prior opinion 258 Pacific 2d 1043.

JURISDICTION

The decision and opinion of the Supreme Court of California was handed down December 18th, 1953. Rehearing was denied January 14th, 1954. Justice William O. Douglas extended the time within which to file the Petition for Certiorari to May 14th, 1954. The petition for certiorari is being filed within the time allowed by Justice William O. Douglas.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Health and Safety Code, State of California, Section 11162.5:

> "§11162.5. Validity of prescription: Responsibility of practitioner and pharmacist: Order for narcotics issued to addict. A prescription, in order to be effective in legalizing the possession of unstamped narcotic drugs and eliminating the necessity for use of order forms, must be issued for legitimate medical purposes. The responsibility for the proper prescribing and dispensing of narcotic drugs is upon the practitioner, but a corresponding liability rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued to an addict or habitual user of narcotics, not in the course of professional treatment but for the purpose of providing the user with narcotics sufficient to keep him com-

fortable by maintaining his customary use, is not a prescription within the meaning and intent of this division; and the person filling such an order, as well as the person issuing it, may be charged with violation of the law."

Health and Safety Code, State of California, Section 11163:

"§11163. Narcotic not to be prescribed etc., for person not under treatment. Except in the regular practice of his profession, no person shall prescribe, administer, or furnish, a narcotic to or for any person who is not under his treatment for a pathology or condition other than narcotic addiction, except as provided in this division."

Health and Safety Code, State of California, Section 11330:

"§11330. Physician's authority to prescribe.

[Diseases, injuries, etc., authorizing use.] A physician may prescribe for, furnish to, or administer narcotics to his patient when the patient is suffering from a disease, ailment, injury or infirmities attendant upon old age, other than narcotic addiction.

[Necessity of good faith.] The physician shall prescribe, furnish, or administer narcotics only when in good faith he believes the disease, ailment, injury, or infirmity, requires such treatment.

[Quantity: Length of time.] The physician shall prescribe, furnish, or administer narcotics

only in such quantity and for such length of time as are reasonably necessary."

Health and Safety Code, State of California, Section 11001:

"§11001. 'Narcotics' defined. 'Narcotics,' as used in this division, means any of the following:

(a) Cocaine.

(b) Opium.

(c) Morphine.

(d) Codeine.

(e) Heroin.

(f) Alpha eucaine.

(g) Beta eucaine.

(h) All parts of the plant Cannabis sativa L., (commonly known as marihuana), whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin; except as otherwise provided by law.

(i) Isonipecaine. 'Isonipecaine' shall mean any substance identified chemically as l-methyl-4-phenyl-piperidene-4-carbozylic acid ethyl ester, or any salt thereof, by whatever trade name designated.

(j) Amidone. Amidone shall mean any substance identified chemically as 4.4-diphenyl-6-dimethylamino-heptanone-3, or any salt thereof by whatever trade name designated.

(k) Any substance decreed by a narcotic as provided by Section 11002.1.

(l) All part of the plant of the genii lophophora whether growing or otherwise; the buttons thereof, the alkaloids extracted from any such plant; and every compound, salt, derivative, mixture or preparation of such plant."

STATEMENT OF FACTS

The petitioner is a physician and surgeon, licensed to practice medicine in the State of California. Prior to his arrest on this charge, he had never been arrested before and was in no wise ever charged in any proceeding with having violated the narcotic laws of the State of California.

One Edward J. Mantler, Inspector for the Bureau of Narcotic Enforcement of the State of California, conceived the idea of having a conversation with the defendant doctor, on July 29th, 1952. (R. Tr. 18). The first full or actual conversation that he had with the defendant was on September 19th, 1952, at 11:05 a.m. (R. Tr. 20), when he went to the house of the doctor with a man named Donald Grimes, whom the officer knew as a narcotic addict. The inspector walked up to the doctor and was introduced to the doctor as a "Mr. Roy Bates". At that time the inspector stated to the doctor that he hoped the doctor would take care of his wife. (R. Tr. 22). The doctor asked to have the patient brought out to him and the inspector said that that would not be convenient. The doctor then asked what kind of medicine his wife used, and Mantler said she had used all different kinds in the past two years.

After a conversation about the doctor's dog and his cat, they entered the doctor's house and the doctor asked what it was Mantler wanted; whether his wife used methadon, and Mantler replied mostly methadon or demerol. A prescription was written and Mantler paid the doctor $15.00. Ten days later Mantler returned. He and the doctor visited in a friendly manner, and Mantler said his wife was not doing so good; that she had run out of medicine, but he had something for an emergency. The doctor asked him if his wife gave trouble when she was short of medicine, and Mantler said she very nearly ran me up the chimney of the house on occasions. The doctor wrote on his prescription book T-B and said "what else is wrong with her, I have forgotten what you said the last time." Mantler said, "Well, she had an old hysterectomy a couple of years ago." Mantler paid the doctor $10.00. About ten days later, Mantler went to the doctor again. In another visit ten days later, when the doctor asked how she was getting along, Mantler told him things were pretty tough. Mantler testified on cross examination, he told the doctor that his wife had T B. On one occasion, Mantler offered the doctor $20.00, but he refused to take more than $10.00. After Mantler obtained the first prescription, it was known to other inspectors in the Narcotic Enforcement Office that he had obtained it by false representations to the doctor that "Julia Bates" was his wife and was in need of drugs. Upon Mantler's fourth visit, the defendant was arrested by Mantler and three other inspectors, who seized all his prescription books and records without any search warrant or any other process.

The District Court of Appeal, Second Appellate District, State of California considered the challenge of the appellant that his arrest and conviction was an entrapment contrary to public policy and in violation to the Fourteenth Amendment to the Constitution of the United States and upheld the challenge of the defendant that his constitutional rights under the Fourteenth Amendment to the Constitution of the United States had been violated. (See Certificate of Presiding Justice Shinn of the District Court of Appeal, Second Appellate District; also Opinion of the District Court of Appeals, Second Appellate District, Division Three, made a part of and incorporated as the dissenting opinion of two of the California Supreme Court Justices.) The Supreme Court of California thereafter considered the case and the challenge therein made, and found against the claimed violation of public policy and constitutional rights under the Fourteenth Amendment to the Constitution of the United States.

QUESTIONS PRESENTED BY THIS WRIT

1. Whether a judgment of conviction of a physician and surgeon was void as being violative of the Fourteenth Amendment to the Constitution of the United States where it is brought about by the entrapment of a doctor by a narcotic inspector.

2. Whether an entrapment of a physician and surgeon, who is induced to write a prescription for a medicine containing a narcotic by false and fraudulent representations, is so violative of the fundamental principles of liberty and justice as to void the conviction under the Fourteenth Amendment to the Constitution of the United States.

3. Whether a conviction should be voided as violative of the Fourteenth Amendment to the Constitution of the United States, as construed and applied in this case, upon the following facts:

> When a narcotic officer conceives a plan to entrap a physician into a violation of the law; has himself introduced to the physician under an assumed name, represents that he has a sick wife who is using Methadon or Demerol (trade names); makes excuses for not bringing her to the doctor's office when told he should do so, ignores a request by the doctor that he call upon her, and obtains prescriptions in a fictitious name given as that of his wife.

May the doctor be lawfully convicted of violation of the law, which forbids prescribing a narcotic for one not under his treatment, and may such a conviction be sustained without violating due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States?

4. Whether the employment of fraud and deception in the entrapment of a physician violates due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

5. Whether Section 11163 of the Health and Safety Code of the State of California has been constitutionally construed and applied in this case, or whether its construction and application violates the Fourteenth Amendment to the Constitution of the United States.

REASONS FOR GRANTING THE [illegible] WRIT

I.

This case raises important questions [illegible] ns of criminal law involving the question of whether en[illegible] entrapment of a physician in violation of public policy [illegible] cy violates the due process clause of the Fourteenth An[illegible] Amendment to the Constitution of the United States, a[illegible] and whether such a procedure and practice is so viol[illegible] iolative of the fundamental principles of liberty and j[illegible] justice as to offend the due process clause of the [illegible]e Fourteenth Amendment.

In *Sorrells v. United States*, 287 U. S. 4[illegible]. 434, 77 L. Ed. 413, at 423, this Court, speaking through [illegible]h Mr. Justices Roberts, Brandeis and Stone, in a concurr[illegible]rring opinion, stated:

> "There is common agreement that [illegible]at where a law officer envisages a crime, plans it, a[illegible] and activates its commission by one not theretofo[illegible]fore intending its perpetration, for the sole purpose [illegible]se of obtaining a victim through indictment, convicti[illegible]ction and sentence, the consummation of so revol[illegible]volting a plan ought not to be permitted by any sel[illegible] self-respecting tribunal. Equally true is this whether[illegible]her the offense is one at common law or merely a [illegible] a creature of statute. Public policy forbids such [illegible]h sacrifice of decency. The enforcement of this polic[illegible]licy calls upon the court, in every instance where alle[illegible] alleged entrapment of a defendant is brought to i[illegible] its notice, to ascertain the facts, to appraise their [illegible]ir effect upon the administration of justice, and to [illegible] to make such

> order with respect to the further prosecution of the cause as the circumstances require. . . . The violation of the principles of justice by the entrapment of the unwary into crime should be dealt with by the court no matter by whom, or at what stage of the proceedings the facts are brought to its attention. . . . Proof of entrapment, at any stage of the case, requires the court to stop the prosecution, direct that the indictment be quashed, and the defendant set at liberty."

The District Court of Appeal in its opinion, upholding challenge to the constitutionality under the Fourteenth Amendment, stated:

> "If we were to uphold the conviction of Dr. Braddock, it would mean that we were approving the unlawful enforcement of the law in giving a free hand to law enforcement officers to use not only deceitful means, but unlawful means, to entice physicians, and other as well, to violate the law. The courts have consistently refused to temporize with such fraud, deceit and direct violation of statutory law as the record here discloses. The agent provocateur, so despised that he has been given no name in our language and can claim no place in our society, had best have the door shut against him whenever he appears. Our courts have given no encouragement to his hateful practices, no foothold in our field of law enforcement from which to extend his contaminating influence."

In *Lisenba v. California,* 314 U. S. 166, this court stated that a conviction obtained through fraud and deception offended due process of law.

The cases cited in the opinion of the District Court of Appeal, Second Appellate District, and made a part of the dissenting opinion in the Supreme Court of the State of California, are referred to herein.

WHEREFORE, Petitioner prays that this Honorable Court grant certiorari and reverse the judgment and order below.

MORRIS LAVINE and
ARTHUR F. LARRABEE
Attorneys for Petitioner.

"Demerol Hydrochloride" is listed in the manual of Merck & Company, 8th Edition 'The Merck Manual of Diagnosis and Theraphy, a source of Ready Reference for the Physician,' page 220, as prescriptions number 55, or 56:

"55. Demerol Hydrochloride, ampule 50 to 100 M.G. I.M. every 4 hours for pain and restlessness."

"56. R/Demerol Hydrochloride, 50 M.G., 1 or 2 tablets every 4 hours for pain and restlessness."

(The Merck Manual, page 220, under the heading of Proprietary Remedies)." Nothing is said therein about Demerol being a narcotic.

IN THE SUPREME COURT OF THE UNITED STATES

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THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

MOTION

COMES NOW DR. RAYMOND M. BRADDOCK and moves this Honorable Court for leave to proceed upon the typewritten record pending the determination of this Court on whether it will grant certiorari. The said motion is based upon the following grounds:

That Dr. Braddock, since his arrest and conviction, has been ill and has had little practice, and is presently short of funds sufficient to pay for the printing of the record. Wherefore, he petitions this Honorable Court to allow him to proceed on the typewritten record in the determination of whether certiorari will be granted or not.

MORRIS LAVINE and
ARTHUR F. LARRABEE
By: Morris Lavine
Attorneys for Petitioner